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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,317	10/16/2003	Amy N. Mudd	380-148	8778
1009 7590 02/23/2007 KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507			EXAMINER TILL, TERRENCE R	
			ART UNIT 1744	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/687,317

Applicant(s)

MUDD, AMY N.

Examiner

Terrence R. Till

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-21, 24-28, 31, 35, 36 and 39-48 is/are pending in the application.
- 4a) Of the above claim(s) 12-15, 19-21, 39-42 and 46-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 28, 31, 35, 36 and 43-45 is/are rejected.
- 7) ☒ Claim(s) 2-4, 7-11, 16-18, 24-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al. (US 6,003,196) in view of Matsumoto et al. (US 2001/0025395).

3. The patent to Wright et al. discloses a vacuum cleaner, comprising: a housing including a nozzle section C and a canister section B wherein said nozzle section and said canister section are pivotally connected together via hinge D; a nozzle inlet 26 on said nozzle section; a suction generator E carried on said housing; a dirt vessel 52 carried on said housing, said dirt vessel including a sidewall and an open end 100. Wright et al. do not disclose a plunger received in said dirt vessel, said plunger being selectively displaceable between a first position spaced along said sidewall away from said open end and a second position spaced along said sidewall adjacent said open end. The publication to Matsumoto et al. discloses (see figure 26) a vacuum cleaner having a housing 5 including a nozzle section, connected to pipe 3, a plunger 9a received in said dirt vessel 7,8, said plunger being selectively displaceable between a first position spaced along said sidewall away from said open end and a second position spaced along said sidewall adjacent

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said open end. It would have been obvious to a person skilled in the art at the time the invention was made to provide the dirt vessel of Wright et al. with a plunger in view of the teaching of Matsumoto et al. in order to compress the dirt in the dirt vessel in order to operate the vacuum cleaner for longer periods of time in between emptying the dirt vessel (see paragraphs 148-152 of Matsumoto et al.).

4. Claims 28, 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda et al. (JP 54-19558- cited previously) in view of Matsumoto et al. (US 2001/0025395).

5. Fukuda et al. discloses a dirt vessel, comprising: a sidewall 2 having an open end; and a door 22 closing said open end of said sidewall; a plunger 15 having a margin including a cleaning element in engagement with said sidewall, said plunger being selectively displaceable between a first position spaced along said sidewall away from said open end and a second position spaced along said sidewall adjacent said open end; and an outlet 8 provided in said sidewall. Fukuda et al. also includes a cylindrically shaped filter element (see figures 1 and 2) mounted on the plunger and received concentrically within the dirt vessel. Fukuda et al. do not disclose the sidewall having an inlet. However the publication to Matsumoto et al. discloses a similar device to that of Fukuda, including (see figure 26) a vacuum cleaner having a housing 5 including a nozzle section, connected to pipe 3, a plunger 9a received in said dirt vessel 7,8, said plunger being selectively displaceable between a first position spaced along said sidewall away from said open end and a second position spaced along said sidewall adjacent said open end. Matsumoto et al. additionally disclose the sidewall having an inlet 5a. Therefore, It would have been obvious to a person skilled in the art at the time the invention was made to modify the dirt vessel of Fukuda et al to have an inlet in the side wall in view of the teaching of Matsumoto et

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al., since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Additionally, with respect to claim 45, Fukuda et al. does not specifically disclose that the dirt vessel is cylindrically shaped, However it would have been an obvious matter of engineering choice to modify the shape of the dirt vessel to be cylindrical, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

6. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda et al. (JP 54-19558- cited previously), as modified by Matsumoto et al. (US 2001/0025395) as applied to claim 28 above, and further in view of French patent to Buron et al. (FR-2,823,091- cited previously).

7. Fukuda et al. does not disclose said cleaning element is a resilient wiper. The French patent to Buron et al. discloses a plunger assembly 10,12,14 that includes a resilient wiper 14 in engagement with the sidewall 2 of a dirt vessel 1. It would have been obvious to a person skilled in the art at the time the invention was made to provide Fukuda et al. with a resilient wiper in view of the teaching of Buron et al. in order to be able to wipe all the dust from the container walls, without leaving a thin film of dust on the container wall.

8. Claims 35 and 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda et al. (JP 54-19558- cited previously), as modified by Matsumoto et al. (US 2001/0025395) as applied to claim 28 above, and further in view of PG publication to Oh et al. (PG PUB 2001/0042283).

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9. Fukuda et al. discloses the claimed invention except that Fukuda et al. have a door frictionally fit to the cylindrical side wall instead of connected by a hinge to said sidewall and including a latch for securing said door in a closed position relative to said sidewall. The publication to Oh et al. shows that discloses a vacuum cleaner having a dirt vessel 30 with a cylindrical side wall 260 and a circular bottom wall 270 that is hinged to side wall 260 at hinge 271 and latched at the other side by latch assembly 272,273 is an equivalent structure known in the art. Therefore, because these two types of door closures were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the door closure mechanism of Fukuda et al. for a hinged door including a latch in view of the teaching of Oh et al.

*Allowable Subject Matter*

10. Claims 2-4, 7-11, 16-18 and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: With respect to claim 2, the prior art does not disclose the claimed combination of subject matter, particularly said plunger includes a margin slidably engaging an inner surface of said sidewall. The publication to Matsumoto et al. specifically (see paragraph 149) leaves a gap between the plunger and the wall of the dirt container. The plunger of Fukuda et al. does engage the sidewall, but it is not considered obvious to provide the plunger arrangement to Wright et al., or any other upright vacuum cleaner of the prior art, since the manner in which Fukuda operates would

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prevent such a modification from taking place. There is no place for the hinged handle 20,21 of Fukuda to be stored in any upright of the prior art without extensive modification.

***Response to Arguments***

12. Applicant's arguments with respect to claim 1-4, 7-11, 16-18, 24-28, 31, 35, 36 and 43-45 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

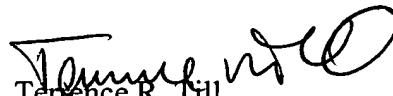
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Terrence R. Till  
Primary Examiner  
Art Unit 1744

trt